

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

JENNIFER HOBSON,	:	
	:	C.A. No: 10A-02-003 (RBY)
Appellant,	:	
	:	
v.	:	
	:	
UNEMPLOYMENT INSURANCE	:	
APPEAL BOARD,	:	
	:	
Appellee.	:	

Submitted: August 3, 2010
Decided: September 13, 2010

*Upon Consideration of Appellant's
Appeal from the Unemployment Insurance
Appeal Board*
AFFIRMED

OPINION AND ORDER

Jennifer Hobson, *pro se*.

Philip G. Johnson, Esq., Department of Justice, Wilmington, Delaware for Appellee.

Young, J.

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SUMMARY

_____Jennifer Hobson (“Appellant”) appeals from a determination of the Unemployment Insurance Appeal Board (“UIAB” or the “Board”) which held that her appeal was untimely; and that, therefore, the Board did not have jurisdiction to hear the merits of her case. Because there is substantial evidence in the record to support the conclusion that Appellant missed the proper appeal deadline, the decision of the Board is affirmed.

FACTS

_____Appellant filed a claim for unemployment benefits on or about October 26, 2008. Subsequently, an investigation by the Division of Unemployment Insurance (“DUI”) revealed that Appellant had been earning wages while continuing to collect unemployment benefits.¹ As a result, a DUI Claims Deputy issued Appellant a fraud disqualification determination under 19 *Del. C.* § 3314(6), and disqualified her from receiving any further unemployment benefits.² Appellant did not challenge her fraud disqualification. Hence, the Claims Deputy’s determination became final on June 13,

¹ The Division of Unemployment Insurance is an arm of the Delaware Department of Labor.

² 19 *Del. C.* § 3314(6) reads “If the Department determines such individual has made a false statement or representation knowing it to be false or knowingly has failed to disclose a material fact to obtain benefits to which the individual was not lawfully entitled, and such disqualification shall be for a period of 1 year beginning with the date on which the first false statement, false representation or failure to disclose a material fact occurred. A disqualification pursuant to this subsection shall be considered a disqualification due to fraud.”

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2009.

On June 23, 2009 the Claims Deputy issued a determination pursuant to 19 *Del. C. § 3325*, assessing Appellant payments of \$175 for 7 weeks in order to recoup the Department of Labor's overpayment of her unemployment benefits.³ Appellant timely appealed the Claims Deputy's assessment determination, and a hearing was duly scheduled before an Appeals Referee. After hearing evidence from both Appellant and a DUI representative, the Appeals Referee affirmed the Claims Deputy's assessment determination.

The Appeals Referee's decision was dated and mailed to Appellant on July 30, 2009, and included notice that any appeal to the UIAB must be filed by August 9, 2009. Appellant missed the deadline, eventually filing her UIAB appeal on September 10, 2009. The Board reviewed the matter, rejecting Appellant's application for further review as untimely. This appeal followed.

STANDARD OF REVIEW

When this Court reviews a procedural decision of the Unemployment Insurance Appeal Board, it must consider whether the Board abused its discretion in rendering

³ 19 *Del. C. § 3325* reads in pertinent part, "Any person who has received any sum as benefits under this chapter to which it is finally determined that the person was not entitled shall be liable to repay in cash said overpayment, to the Department for the Unemployment Compensation Fund, or to have such sum deducted from future benefits payable to the person under this chapter."

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its decision.⁴ A procedural decision by an administrative agency is not an abuse of discretion “unless it is based on clearly unreasonable or capricious grounds,” or the Board’s decision “exceeds the bounds of reason in view of the circumstances and ignored recognized rules of law or practice so as to produce injustice.”⁵ Absent an abuse of discretion, the Court must affirm the Board’s judgment if it did not otherwise commit an error of law.⁶

The Court’s review of the Board’s decision is twofold. First, the Court must determine if there are facts to support the finding that the appeal was untimely. Second, the Court must determine whether the Board abused its discretion by not exercising, *sua sponte*, its power to review the record for an injustice despite the untimely appeal.⁷

DISCUSSION

Title 19 *Del. C.* § 3318(c) provides that an Appeals Referee’s decision “shall be deemed final unless within 10 days after the date of notification or mailing of such decision further appeal [to the Board] is initiated pursuant to § 3320 of this Title.” Here, the Appeals Referee’s decision was dated and mailed July 30, 2009, becoming

⁴ *Wilson v. Franciscan Care Center*, 2006 WL 1134779 (Del. Super. Apr. 18, 2006) (citing *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991)).

⁵ *K-Mart, Inc. v. Bowles*, 1995 WL 269872, at *2 (Del. Super. Mar. 23, 1995).

⁶ *Funk v. UIAB*, 591 A.2d 222, 225 (Del. 1991).

⁷ *Robledo v. Stratus*, No. C.A. 00A-09-001, 2001 WL 428684 (Del. Super. Mar. 27, 2001) at ¶ 3.

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final on August 9, 2009. Appellant filed her appeal to the UIAB on September 10, 2009.

In her opening brief, Appellant asserts that her inability to meet the appeal deadline was due to the U.S. Postal Service's failure to deliver her mail in a timely manner. Appellant also testified before the Appeals Referee that she never received notice of the Claims Deputy's June 3, 2009 fraud determination.⁸

Appellant's claims are controlled by settled Delaware law. "Properly addressed mail is presumed to be received by the addressee. The addressee's mere denial of receipt of the notice is insufficient to rebut this presumption."⁹ Here, the decision was properly mailed to the claimant's correct address, and it was not returned as "undeliverable." Moreover, there is no evidence of error by an employee of the Department of Labor. Based on the above findings, the Board's determination that the notice was properly mailed to Appellant, and that her subsequent appeal was untimely filed, is supported by substantial evidence.¹⁰

The Board does, however, have authority under 19 *Del. C.* § 3320 to "act *sua sponte* beyond the ten day appeal period to consider a case where no valid appeal has been filed by the parties."¹¹ This authority is exercised only "where there has been

⁸ Appellant did not, however, indicate to the Appeals Referee that the letter was mailed to the wrong address.

⁹ *Robledo, supra*, at ¶ 6 (citing *Brown v. City of Wilmington*, C.A. No. 95A-01-007, 1995 WL 653460 (Del. Super. Sept. 21, 1995)).

¹⁰ *Robledo, supra*, at ¶ 6.

¹¹ *Funk*, 591 A.2d at 225.

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some administrative error on the part of the Department of Labor which deprived the claimant of the opportunity to file a timely appeal, or in those cases where the interests of justice would not be served by inaction.”¹² Absent abuse of discretion the Court must uphold a decision of an administrative tribunal.¹³

Appellant’s untimely UIAB appeal describes a long history of problems with the U.S. Postal Service, and requests that all contact with her be made through certified mail. The Board, however, is not required to honor requests for delivery by certified mail.¹⁴ Further, there is no indication in the record that Appellant ever complained to the U.S. Postal Service or made any other attempt to remedy the untimely delivery of her mail. There is no abuse of discretion where the claimant had notice through prior experience of the possible delays in the delivery of her mail, and where the late delivery was made through no fault of the Department of Labor.¹⁵ The Board had discretion in this matter. It is not for this Court to substitute its assessment. Thus, under the circumstances, it did not abuse its discretion by refusing to consider the case *sua sponte*.

¹² *Id.*

¹³ *Id.*

¹⁴ See *Hefley v. Unemployment Insurance Appeals Board*, 2009 WL 5177136 (Del. Super. July 17, 2009).

¹⁵ *Funk*, 591 A.2d at 226.

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CONCLUSION

For the reasons stated above, the decision of the Board is supported by substantial evidence, is free from legal error, and is not an abuse of discretion. Consequently, the decision of the Board is hereby **AFFIRMED**.

SO ORDERED.

/s/ Robert B. Young

J.

RBV/sal

oc: Prothonotary

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